# (19,047.)

# SUPREME COURT OF THE UNITED STATES.

## OCTOBER TERM, 1904.

## No. 104.

HENRY DALLEMAGNE, CONSUL GENERAL OF THE REPUBLIC OF FRANCE, APPELLANT,

*vs.*

JEAN FRANCOIS MOISAN.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JULY 13, 1904.

1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to Jean Francois Moisan and William Denman, Esq., his attorney, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington in the District of Columbia, within sixty days from the date hereof, pursuant to an order allowing an appeal, of record in the clerk's office of the district court of the United States, for the northern district of California, wherein Henry Dallemagne, consul-general of the Republic of France, resident at San Francisco, acting for and on behalf of the Republic of France, is appellant, and you are appellee, to show cause, if any there be, why the decree rendered against the said appellant, as in the said order allowing appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, this 24" day of July, A. D. 1903.

JAS. H. BEATTY,
*United States District Judge.*

Service and delivery of a true copy of the above citation is hereby admitted this 24th day of July, A. D. 1903.

WILLIAM DENMAN,
*Attorney for Appellee.*

2 [Endorsed:] No. 12977. District court of the U. S., northern district of California. Henry Dallemagne, appellant, *vs.* Jean François Moisan, appellee. Citation. Filed, Jul- 25 1903. George E. Morse, clerk, by John Fouga, deputy clerk. Andros & Hengstler, attorneys for appellant.

3 In the District Court of the United States in and for the Northern District of California.

In the Matter of the Application of JEAN FRANCOIS MOISAN for Writ of *Habeas Corpus.*

*Complaint for Writ of Habeas Corpus.*

Your complainant respectfully shows:

I.

That he is Jean Francois Moisan, a citizen of France, more than twenty-one years of age, at present residing in and forcibly confined in the city and county of San Francisco, State of California, in the city prison thereof.

II.

That on or about the 1st day of May, 1903, one Henry Dallemagne, a consul general for France, residing in the city and county of San Francisco, State of California, did make his requisition in writing for the arrest and detention of your complainant, directed to and delivered to George W. Wittman, the chief of police of the said city and county, in form and fact as follows:

"To George W. Wittman, Esq., chief of police, hall of Justice, San Francisco, California.

4 DEAR SIR: Jean Francois Moisan, a member of the crew of the French bark Jaques, whereof Louis M. Michel is master, having conducted himself in an improper and insubordinate manner on board, I have the honor, in pursuance of the provisions of the terms of article 8 of the consular convention of 1853, between France and the United States, to request that you will please cause the said Jean Francois Moisan to be arrested, brought on shore and imprisoned until I find an opportunity of sending him away. An official abstract from the crew list is hereby annexed. The expenses of such arrest and detention to be paid by me.

I have the honor to be, dear sir, very truly yours,

[SEAL.] HENRY DALLEMAGNE,
*French Consul General.*"

III.

That accompanying said requisition, the said consul general did serve upon and deliver to the said George W. Wittman an official abstract from the crew list showing your complainant to have been a member of the crew of the said French bark "Jacques."

IV.

That thereafter and on or about the 1st day of May, 1903, and pursuant to the said request in said requisition contained and purporting to act upon the alleged authority of the said requisition, the said George W. Wittman, as said chief of police, with force and against the will of your complainant, arrested him, the said complainant, and forcibly carried him to the city prison of the said city and county, and ever since has caused him to be confined in the said city prison against his, your complainant's, will, and that he still confines complainant in the said prison; claiming at all times herein mentioned to act pursuant to the alleged authority conferred upon him by the said requisition of the said French con-
5 sul general.

V.

That complainant is informed and believes and upon his information and belief alleges, that the said French bark "Jacques" is

no longer in the port of San Francisco, nor in the vicinity thereof, but that it has a long time since departed from the said port for France.

VI.

That the said imprisonment is illegal in this, that the state of facts, as hereinbefore set forth, does not confer jurisdiction upon the said consul and the said George W. Wittman, or either of them, to restrain complainant from his liberty and to imprison him as herein alleged.

Wherefore, complainant prays that a writ of *habeas corpus* may be granted, directed to the said George W. Wittman, commanding him to have the body of Jean Francois Moisan before your honor, at the time and place therein specified, to do and receive what shall then and there be considered by your honor concerning him, together with the time and cause of Jean Francois Moisan's detention, and said writ; and that he may be restored to his liberty.

JEAN FRANCOIS MOISAN,
*Complainant.*

WILLIAM DENMAN,
*Attorney for Complainant.*

STATE OF CALIFORNIA, }
*City and County of San Francisco,* } *ss:*

Jean Francois Moisan, being first duly sworn, deposes and says that he is the complainant in the above-entitled matter; that he has heard read the foregoing complaint for writ of *habeas corpus*, and knows the contents thereof, and that the same is true of his own knowledge, except as to those matters which are therein stated on his information and belief, and as to those matters that he believes it to be true.

6

JEAN FRANCOIS MOISAN.

Subscribed and sworn to before me, this 26th day of May, 1903.

OLIVER DIBBLE,
[SEAL.] *Notary Public in and for said City and County of San Francisco, State of California.*

Endorsed: Let the writ issue, returnable May 28, 1903, at 10 a. m. John J. De Haven, judge. Filed May 27 1903. Geo. E. Morse, clerk. By J. S. Manley, deputy clerk.

7 In the District Court of the United States, Northern District of California.

In the Matter of JOHN FRANCOIS MOISAN, on *Habeas Corpus*. No. 12977.

The President of the United States of America to Geo. W. Witman, chief of police, hall of justice, city and county of San Francisco, or whoever may have the custody or control of said John Francois Moisan, Greeting:

You are hereby commanded, that you have the body of the above-named person, by you imprisoned and detained, as it is said, together with the time and cause of such imprisonment and detention, by whatsoever name the said person shall be called or charged, before the Honorable John J. De Haven, judge of the district court of the United States for the northern district of California, at the court-room of said court in the city and county of San Francisco, California, on the 28th day of May, 1903, at 10 o'clock a. m., to do and receive what shall then and there be considered in the premises.

And have you then and there this writ.

Witness, the Honorable John J. De Haven, judge of the said district court, and the seal thereof, at San Francisco, in said district, on the 27th day of May, A. D. 1903.

[SEAL.]

GEO. E. MORSE,
*Clerk of said District Court,*
By J. S. MANLEY,
*Deputy Clerk.*

Endorsed: Issued May 27, 1903. Returnable May 28, 1903. Filed on return this May 27 1903 10 a. m. Geo. E. Morse, clerk of said U. S. district court. By J. S. Manley, deputy clerk.

8

Duplicate.

Abstract from the roll, crew list of the French bark "Jacques," Captain Louis M. Michel, now lying in the harbor of San Francisco.

| Names. | Capacity on board. | Observations. |
|---|---|---|
| Jean Francois Moisan | Sailor | Boat lying at Beale Street wharf. |

Age, 25 years; height, ——.
Hair, ——; eyes, ——.
Nose, ——; mouth, ——.
Chin, ——; visage, ——.
Complexion, ——.

The undersigned, consul of France in San Francisco, certifies that the above is a true and authentic abstract translated into English, from the ship's roll of the French bark "Jacques," Captain Louis M. Michel, now lying in the harbor of San Francisco; and that said abstract is made according to the VIII article of the consular convention between the United States and France, of the 23d February, 1853, to be used for all purposes and to all ends, in virtue of said treaty, as well, and with as much force and authenticity, as if the ship's roll itself was exhibited.

In witness thereof, I have hereto set my signature and official consular seal.

San Francisco, May 1st, 1903.

[SEAL.] HENRY DALLEMAGNE,
*The Consul General of France.*

9 Consulat de France, San Francisco.

SAN FRANCISCO, 1*st Mai*, 1903.

George W. Wittman, chief of police, hall of justice, San Francisco, Cala.

DEAR SIR: Jean Francois Moisan, a member of the crew of the French bark "Jacques" whereof Louis M. Mickel *a* master, having conducted himself in an improper and insubordinate manner on board. I have the honor in pursuance of the provisions of the terms of art. 8, of the consular convention of 1853, between France and the United States, to request that you will please cause the said J. F. Moisan to be arrested, brought on shore and imprisoned until I find an opportunity of sending him away. An official abstract from the crew list is hereto annexed. The expense of such arrest and detention to be paid by me. I have the honor to be, dear sir,

Very truly yours, HENRY DALLEMAGNE,
*French Consul-General.*

10 In the District Court of the United States, Northern District of California.

*Ex Parte* JOHN FRANCOIS MOISAN, on *Habeas Corpus*. No. 12977.

STATE OF CALIFORNIA,
*City and County of San Francisco,* } *ss.*:

I, George W. Wittman, chief of police of the city and county of San Francisco, State of California, acting in obedience to the writ of *habeas corpus* issued herein by said honorable court do here and now produce the body of the said John Francois Moisan, and respectfully return and show that he is in my custody by virtue of

the request from Henry Dallemagne, French consul general, and an abstract from the roll of the French bark "Jacques" true copies of which said request and abstract from roll are hereto attached and made a part of this my return to said writ of *habeas corpus*.

GEO. W. WITTMAN,
*Chief of Police.*

San Francisco, California, May 28th, 1903.

11 In the District Court of the United States, Northern District of California.

In the Matter of JEAN FRANCOIS MOISAN, on *Habeas Corpus*. No. 12977.

The President of the United States of America to Geo. W. Witman, chief of police, hall of justice, city and county of San Francisco, or whoever may have the custody or control of said Jean Francois Moisan, Greeting:

You are hereby commanded, that you have the body of the above named person, by you imprisoned and detained, as it is said, together with the time and cause of such imprisonment and detention, by whatsoever name the said person shall be called or charged, before the Honorable John J. De Haven, judge of the district court of the United States for the northern district of California, at the court-room of said court in the city and county of San Francisco, California, on the 28th day of May, 1903, at 10 o'clock a. m., to do and receive what shall then and there be considered in the premises.

And have you then and there this writ.

Witness, the Honorable John J. De Haven, judge of the said district court, and the seal thereof, at San Francisco, in said district, on the 27th day of May, A. D. 1903.

[SEAL.]

GEORGE E. MORSE,
*Clerk of said District Court,*
By J. S. MANLEY,
*Deputy Clerk.*

12 I, George E. Morse, clerk of the district court of the United States, for the northern district of California, do hereby certify the foregoing to be a copy of the writ of *habeas corpus*, issued in the within entitled matter.

Attest my hand and seal of said district court this 27th of May, A. D. 1903.

[SEAL.]

GEO. E. MORSE, *Clerk,*
By J. S. MANLEY,
*Deputy Clerk.*

I hereby certify, that on the 27th day of May, 1903, I received the writ of which the within is a copy, and that on the 27 day of May, 1903, at San Francisco, in this district, I personally served the said writ, by delivering to and leaving the same with chief clerk of Geo. W. Whitman, chief of police of San Francisco, California.

Dated, San Francisco, Cal. May 27, 1903.

JOHN H. SHINE,
*U. S. Marshal,*
By WILLIAM P. GAMBLE,
*Office Deputy Marshal.*

Endorsed: Issued May 27–1903. Returnable May 28–1903. Filed on return this 28th day of May, 1903, 10 a. m. Geo. E. Morse, clerk of said U. S. district court. By J. S. Manley, deputy clerk.

13 At a stated term of the district court of the United States of America, for the northern district of California, held at the court-room in the city and county of San Francisco, on Thursday the 28th day of May, A. D. 1903.

Present: The Honorable John J. De Haven, judge.

In the Matter of JEAN FRANCOIS MOISAN, on *Habeas Corpus.* No. 12977.

In this matter, the chief of police, George W. Whitman, made due return to the writ of *habeas corpus* issued herein and produced the body of Jean Francois Moisan in open court. The matter thereupon came on regularly for hearing, William Denman appearing as attorney for the petitioner; Edward J. Banning, assistant U. S. attorney, on behalf of the respondent George W. Whitman, chief of police, and L. T. Hengstler on behalf of Henry Dallemagne, the consul-general of France at San Francisco. On motion of Mr. Denman, who called Jean Francois Moisan, and who was sworn and examined as a witness in that regard, it is ordered that this matter may be prosecuted without expense to the petitioner. Mr. Hengstler filed exceptions to the jurisdiction. The matter was thereupon argued by Mr. Denman and Mr. Hengstler, and submitted to the court for decision. After due consideration had thereon, and it appearing to the court that the bark Jacques, of the crew of which said Jean Francois Moisan was a member, has departed the port of San Francisco and is no longer in said port,—it is ordered that the said Jean Francois Moisan be, and he is hereby, discharged from the custody whence produced, and that he go hence without day.

14 On motion of Mr. Hengstler it is ordered that the execution of the judgment of discharge herein be, and the same is hereby, stayed for the term of one day.

15 (*Exceptions by French Consul.*)

In the District Court of the United States in and for the Northern District of California.

In the Matter of the Application of JEAN FRANCOIS MOISAN for a Writ of *Habeas Corpus.*

Henry Dallemagne, consul general of France, resident at San Francisco, intervening in the above entitled matter, respectfully submits:

That the complainant in this case was arrested at intervenor's request, under and by virtue of article VIII of the consular convention between the United States and France, concluded on the 23rd day of February, A. D. 1853, and proclaimed by the President of the United States on the 12th day of August, A. D. 1853, and now in full force and effect.

That a difference has arisen, in the port of San Francisco, between the captain of the French bark "Jacques" and the complainant in this matter, a member of the crew of said bark, and that said complainant's arrest was made by virtue of intervenor's exclusive cognizance of such differences, under said article of said treaty.

That intervenor hereby respectfully excepts to the jurisdiction of the honorable court to issue a writ of *habeas corpus* in this matter, and to the power of this court to take cognizance of this matter.

Respectfully submitted,

ANDROS & HENGSTLER,
*Att'ys for Henry Dallemagne, Consul General of France.*

Endorsed: Filed May 28th, 1903. Geo. E. Morse, clerk. By J. S. Manley, deputy clerk.

16 In the District Court of the United States for the Northern District of California.

In the Matter of the Application of JEAN FRANCOIS MOISAN for a Writ of *Habeas Corpus.* No. 12977.

*Petition for Appeal.*

Henry Dallemagne, consul-general of the Republic of France, acting for and on behalf of the Republic of France, resident at San Francisco, conceiving that he is aggrieved by the order and judgment, entered on the 28th day of May, 1903, in the above-entitled proceeding, does hereby appeal from the said order to the Supreme Court of the United States, and prays that his appeal may be allowed, and that a transcript of the record of proceedings and papers

upon which said order was made, duly authenticated, may be sent to the Supreme Court of the United States.

Dated, San Francisco, the 28th day of May, A. D. 1903.

ANDROS & HENGSTLER,
*Attorneys for the Consul-General of France.*

17 UNITED STATES OF AMERICA, }
*Northern District of California,* } *ss:*

Louis T. Hengstler, being duly sworn, deposes and says that he is one of the counsel for the petitioner above mentioned, and as such has had personal charge of the proceeding in the district court of the United States, in and for the northern district of California; that he knows the contents of the foregoing petition; that the facts therein stated are true, and that this appeal is not taken for delay.

LOUIS T. HENGSTLER.

Subscribed and sworn to before me, this 28th day of May, A. D. 1903.

J. S. MANLEY,
*United States Commissioner for the Northern District of California, at San Francisco.*

Endorsed: Filed,—May 28 1903. Geo. E. Morse, clerk, by J. S. Manley, deputy clerk.

18 In the District Court of the United States for the Northern District of California.

In the Matter of the Application of JEAN FRANCOIS MOISAN for a Writ of *Habeas Corpus*. No. 12977.

*Assignments of Error.*

And now, to-wit: on the 28th day of May, A. D. 1903, the appellant files his assignments of error in the above-entitled cause, and assigns for error therein as follows, to-wit:

1. The court erred in its construction of article VIII. of the treaty between the United States and France, of 1853, in holding that it had jurisdiction of the application herein.
2. The court erred in granting the writ of *habeas corpus*.
3. The court erred in holding that the application must be granted for the reason that the vessel to which Jean Francois Moisan belonged as a member of the crew, had left the port of San Francisco.
4. The court erred in not remanding the prisoner to custody.
5. The court erred in discharging the prisoner from custody.

Dated the 28th of May, 1903.

ANDROS & HENGSTLER,
*Attorneys for the Consul General of France.*

Endorsed: Filed May 28, 1903 Geo. E. Morse, clerk. By J. S. Manley, deputy clerk.

19 In the District Court of the United States for the Northern District of California.

In the Matter of the Application of JEAN FRANCOIS MOISAN for a Writ of *Habeas Corpus*. No. 12977.

*Order Allowing Appeal, etc.*

And now, to-wit: on May 28th, 1903, it is ordered that the appeal be allowed as prayed for. And it is further ordered that said petitioner, Jean Francois Moisan, may, at any time pending said appeal, be enlarged upon executing a recognizance, with sureties in the sum of fifty dollars, to the satisfaction of the clerk of this court, for his appearance to answer the judgment of the supreme court, and upon failure to give bail, to remain in the custody of the United States marshal for the northern district of California.

JOHN J. DE HAVEN,
*District Judge.*

Endorsed: Filed May 28, 1903. Geo. E. Morse, clerk. By J. S. Manley, deputy clerk.

20 In the District Court of the United States in and for the Northern District of California.

In the Matter of the Application of JEAN FRANCOIS MOISAN for a Writ of *Habeas Corpus*.

*Recognizance for Appearance.*

UNITED STATES OF AMERICA, }
*Northern District of California,* } *ss:*

Be it remembered that on this 28th day of May, 1903, before me, J. S. Manley, United States commissioner for the northern district of California, duly appointed by the district court of the United States for the northern district of California to take acknowledgments of bail and affidavits, &c., pursuant to the acts of Congress in that behalf, personally appeared Jean Francois Moisan, as principal, and A. Furuseth and James A. Craig, as sureties, and jointly and severally acknowledged themselves to owe and to be indebted to the United States of America, in the sum of fifty (50) dollars, separately to be levied and made out of their respective goods and chattels, lands and tenements, to the use of the United States, if de-

fault be made in the conditions following, the condition of this recognizance is such, that whereas, lately at a district court of the United States for the northern district of California, in a matter
21 depending in said court in which the said Jean Francois Moisan was the petitioner on *habeas corpus*, a judgment was rendered discharging the said Jean Francois Moisan from custody, and the intervenor Henry Dallemagne, consul-general of France at San Francisco, obtained from said court an appeal to reverse the judgment in the aforesaid matter,—

And whereas, the said Jean Francois Moisan has been required to give a recognizance with sureties in the sum of fifty (50) dollars, to answer any judgment of the said district court of the United States for the northern district of California.

Now, therefore, if the said Jean Francois Moisan shall personally appear at the district court of the United States for the northern district of California to be holden at the court-room of said court, in the city and county of San Francisco, State of California whenever he may be required to render himself in execution of any judgment that may be rendered, then this recognizance shall be void, otherwise to remain in full effect and virtue.

JEAN FRANCOIS MOISAN.
A. FURUSETH.
JAMES A. CRAIG.

Taken and acknowledged before me the day and year as above written.

J. S. MANLEY,
*United States Commissioner for the Northern District of California, at San Francisco.*

NORTHERN DISTRICT OF CALIFORNIA, *ss:*

A. Furuseth and James A. Craig, being duly sworn, each for himself, deposes and says that he is a householder in said district, and is worth the sum of one hundred (100) dollars, exclusive of property exempt from execution, and over and above all debts and liabilities.
22

A. FURUSETH.
JAMES A. CRAIG.

Subscribed and sworn to before me, this 28th day of May, A. D. 1903.

J. S. MANLEY,
*United States Commissioner for the Northern District of California, at San Francisco.*

The form of the foregoing bond and the sufficiency of the sureties thereto is hereby approved.

GEO. E. MORSE,
*Clerk United States District Court, Northern District of California.*

Endorsed: Filed, May 29 1903. Geo. E. Morse, clerk.

23 I, George E. Morse, clerk of the district court of the United States for the northern district of California, do hereby certify the foregoing pages, numbered from 1 to 22, inclusive, to be a full, true and correct copy of the record and proceedings in the matter of Jean Francois Moisan, on *habeas corpus*, No. 12977, and that the same constitute the transcript of the record herein upon appeal to the United States Supreme Court.

I further certify that the cost of the foregoing transcript of record is $10.50, and that said amount was paid by L. T. Hengstler, attorney for the appellant.

In testimony whereof, I have hereunto set my hand and affixed the seal of said district court this 27th day of July, A. D. 1903.

[Seal of the U. S. District Court, Northern Dist. of California.]

GEO. E. MORSE, *Clerk*,
By JOHN FOUGA, *Deputy Clerk*.

Endorsed on cover: File No. 19,047. N. California D. C. U. S. Term No. 104. Henry Dallemagne, consul-general of the Republic of France, appellant, *vs.* Jean Francois Moisan. Filed August 14, 1903.

FILE COPY.

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JAMES H. McKENNEY,
Clerk

# SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

## No. 104.

HENRY DALLEMAGNE, CONSUL GENERAL OF THE REPUBLIC OF FRANCE, APPELLANT,

*vs.*

JEAN FRANCOIS MOISAN, APPELLEE.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

## BRIEF FOR APPELLANT.

WALTER V. R. BERRY.
BENJAMIN S. MINOR.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C. 13848

# SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

## No. 104.

HENRY DALLEMAGNE, CONSUL GENERAL OF THE REPUBLIC OF FRANCE, APPELLANT,

*vs.*

JEAN FRANCOIS MOISAN.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

## BRIEF FOR APPELLANT.

This is an appeal by Henry Dallemagne, consul general of the Republic of France at San Francisco and intervenor on behalf of the Republic of France in the matter of the application of Jean Francois Moisan, a French sailor, for a writ of *habeas corpus*, from the order and judgment of the district court of the United States for the northern district of California, entered on the 28th day of May, 1903, discharging said Moisan from the custody of the chief of police of San Francisco.

STATEMENT OF THE CASE.

On May 1, 1903, Henry Dallemagne, consul general of the French Republic in the city of San Francisco, State of California, in pursuance of the provisions of article VIII of the consular convention of 1853 between the United States and France, made a requisition in writing for the arrest and detention of Jean Francois Moisan, a member of the crew of the French bark "Jacques," lying in the harbor of San Francisco, said requisition being directed and delivered to George W. Wittman, the chief of police of the city of San Francisco, as follows:

> "CONSULAT DE FRANCE, SAN FRANCISCO,
> "SAN FRANCISCO, *1st Mai*, 1903.
>
> "To GEORGE W. WITTMAN, Esq., *Chief of Police, Hall of Justice, San Francisco, California.*
>
> "DEAR SIR: Jean Francois Moisan, a member of the crew of the French bark 'Jacques,' whereof Louis M. Michel is master, having conducted himself in an improper and insubordinate manner on board, I have the honor, in pursuance of the provisions of the terms of article 8 of the consular convention of 1853, between France and the United States, to request that you will please cause the said Jean Francois Moisan to be arrested, brought on shore and imprisoned until I find an opportunity of sending him away. An official abstract from the crew list is hereby annexed. The expenses of such arrest and detention to be paid by me.
>
> "I have the honor to be, dear sir, very truly yours,
> "[SEAL.] HENRY DALLEMAGNE,
> *French Consul General.*"

Accompanying this requisition the consul general delivered to George W. Wittman an official abstract, translated into English, from the ship's roll of the French bark "Jacques," Capt. Louis M. Michel, lying in the harbor of San Francisco. This abstract showed Moisan to be a mem-

ber of the crew of the bark "Jacques," and was made in accordance with the provisions of article VIII of the consular convention between the United States and France, of February 23, 1853.

On the same day, pursuant to the request in this requisition, and acting on the authority of this requisition George W. Wittman, as chief of police, arrested said Moisan and confined him in the city prison of San Francisco.

Shortly after the arrest of Moisan the bark "Jacques" left the port of San Francisco.

On the 28th day of May, 1903, Jean Francois Moisan made an application to the district court of the United States in and for the northern district of California for a writ of *habeas corpus*, alleging that neither the consul general of France nor the chief of police had jurisdiction to restrain him from his liberty and to imprison him as stated.

On the same day the chief of police, acting in obedience to the writ of *habeas corpus* issued by said court, produced the body of Jean Francois Moisan, showing that said Moisan was in his custody by virtue of a written request from Henry Dallemagne, the French consul general of San Francisco, and by virtue of an official abstract from the roll of the French bark "Jacques," copies of said request and abstract being made a part of the return to the writ of *habeas corpus*.

The matter thereupon came on regularly for hearing before the Hon. John J. De Haven, judge of the district court of the United States for the northern district of California. After due consideration of the matter, and it appearing to the court that the bark "Jacques," of the crew of which Jean Francois Moisan was a member, *had departed the port of San Francisco and was no longer in that port*, it was ordered that Jean Francois Moisan be discharged from the custody whence produced.

The execution of said judgment of discharge was stayed for the term of one day.

On the same day Henry Dallemagne, consul general of France, intervening, submitted as follows:

> "That the complainant in this case was arrested at intervenor's request, under and by virtue of article VIII of the consular convention between the United States and France, concluded on the 23d day of February, A. D. 1853, and proclaimed by the President of the United States on the 12th day of August, A. D. 1853, and now in full force and effect.
>
> "That a difference has arisen in the port of San Francisco, between the captain of the French bark 'Jacques' and the complainant in this matter, a member of the crew of said bark, and that said complainant's arrest was made by virtue of intervenor's exclusive cognizance of such differences under said article of said treaty."

And thereupon the said Henry Dallemagne made a petition for an appeal as follows:

> "Henry Dallemagne, consul general of the Republic of France, acting for and on behalf of the Republic of France, resident at San Francisco, conceiving that he is aggrieved by the order and judgment, entered on the 28th day of May, 1903, in the above-entitled proceeding, does hereby appeal from the said order to the Supreme Court of the United States and prays that his appeal may be allowed, and that a transcript of the record of proceedings and papers upon which said order was made, duly authenticated, may be sent to the Supreme Court of the United States."

On the same day Judge De Haven ordered that said appeal be allowed as prayed for; and further ordered that Jean Francois Moisan be enlarged upon executing a recognizance, with sureties, for his presence to answer the judgment of Supreme Court; or, upon failure to get bail, to remain in the custody of the United States marshal for the northern district of California.

On the same day Moisan gave a satisfactory recognizance with sureties, and was duly enlarged to await the judgment of the Supreme Court.

ASSIGNMENTS OF ERROR.

1. The court erred in holding that the application must be granted for the reason that the vessel to which Jean Francois Moison belonged as a member of the crew had left the port of San Franciso.

2. The court erred in its construction of article VIII of the treaty between the United States and France of 1853, in holding that it had jurisdiction of the application herein.

3. The court erred in granting the writ of *habeas corpus*.

4. The court erred in not remanding the prisoner to custody.

5. The court erred in discharging the prisoner from custody.

## ARGUMENT.

The requisition by the French consul general at San Francisco upon the chief of police for the arrest and detention of Jean Francois Moisan was made in pursuance of article VIII of the consular convention between the United States of America and His Majesty the Emperor of the French, concluded on February 23, 1853; ratified by the United States on April 1, 1853; exchanged on August 11, 1853, and proclaimed by the United States on August 12, 1853 (10 U. S. Statutes at Large, p. 997).

This consular convention (which was made in the English and French languages) is still in full force and effect.

Article VIII of said convention is as follows:

ARTICLE VIII.

"The respective consuls general, consuls, vice-consuls, or consular agents, shall have exclusive charge of the internal order of the merchant vessels of their nation, and shall alone take cognizance of differences which may arise, either at sea or in port, between the captain, officers and crew, without exception, particularly in reference to the adjustment of wages and the execution of contracts. The local authorities shall not, on any pretext, interfere in these differences, but shall lend forcible aid to the consuls, when they may ask it, to arrest and imprison all persons composing the crew whom they may deem it necessary to confine. Those persons shall be arrested at the sole request of the consuls, addressed in writing to the local authority, and supported by an official extract from the register of the ship or the list of the crew, and shall be held, during the whole time of their stay in the port, at the disposal of the consuls. Their release shall be granted at the mere request of the consuls made in writing. The expenses of the arrest and detention of those persons shall be paid by the consuls."

ARTICLE VIII.

"Les consuls généraux, consuls, vice-consuls, ou agents consulaires respectifs seront exclusivement chargés de l'ordre intérieur à bord des navires de commerce de leur nation et connaitront seuls de tous les différents qui se seront élevés en mer ou s'élèveront dans les ports, entre le capitaine, les officers et les hommes inscrits sur le rôle d'équipage, à quelque titre que ce soit, particulièrement pour le réglement des salaires et l'exécution des engagements réciproquement consentis; les autorités locales ne pourront s'immiscer à aucun titre dans ces différents, et devront prêter main forte aux consuls, lors qu'ils la requerront, pour faire arrêter et conduire en prison ceux des individus inscrits sur le rôle d'équipage, à quelque titre que ce soit, qu'ils jugeront à propos d'y envoyer. Ces individus seront arrêtés sur la seule demande des consuls adressée par écrit à l'autorité locale et appuyée d'un extrait officiel du registre de bord ou rôle d'équipage et seront tenus, pendant tout le temps de leur séjour dans le port, à la disposition des consuls. Leur mise en liberté s'effectuera sur une simple demande des consuls faite par écrit. Les frais occasionnés par l'arrestation et la détention de ces individus seront payés par les consuls."

In the order of De Haven, J., discharging Moisan from custody, it is recited as follows:

> "The matter was thereupon argued * * * and submitted to the court for decision. After due consideration had thereon, and it appearing to the court that the bark 'Jacques,' of the crew of which said Jean Francois Moisan was a member, has departed the port of San Francisco and is no longer in said port,—it is ordered that the said Jean Francois Moisan be, and he is hereby discharged from the custody whence produced, and that he go hence without day."

The sole reason for the discharge of Moisan by De Haven, J., was that the bark "Jacques," of the crew of which the said Moisan was a member, had departed from the port of San Francisco; that is to say, the court below, construing and interpreting article VIII of the consular convention, declared that, in the following sentence of said article, the word "*their*" refers *not* to persons composing the crew, but to the *ship* itself, and that a sailor can be detained by the local authority, acting at the request of a consul, only during the time of the *ship's* "stay in the port."

The sentence thus construed and interpreted is as follows:

> "Those persons shall be arrested at the sole request of the consuls, addressed in writing to the local authority, supported by an official extract from the register of the ship or the list of the crew, and shall be held, during the whole time of *their* stay in the port, at the disposal of the consuls."

Such a construction seems so extraordinary, not only from a grammatical point of view, but from that of the plain wording and the evident intent of the makers of the convention, that it would seem that no argument were necessary in refutation.

In the preceding sentence of the article it is declared that the local authorities shall lend forcible aid to the consuls to arrest and imprison "*all persons composing the crew*" whom

they may deem it necessary to confine. The article then proceeds:

> "*Those persons* (that is, all persons composing the crew) shall be arrested at the sole request of the consuls, addressed in writing to the local authority, and supported by an official extract from the register of the ship or the list of the crew, and *shall* (that is, *those persons* shall) be held during the whole time of *their* (that is, *those persons*) stay in the port at the disposal of the consuls. *Their* (that is, *those persons*) release shall be granted at the mere request of the consuls made in writing."

If the construction of De Haven, J., were correct and the word "*their*," in the first sentence just quoted, could possibly refer to the word *ship*, then the word "Their," beginning the second sentence just quoted, must also necessarily refer to the word *ship*, which would be an added nonsense.

Turning to the French side of the convention, we find that in the French language (always lucid and accurate in expression) the reading is as follows:

> "Ces individus seront arrêtés sur la seule demande des consuls addressée par écrit à l'autorité locale et appuyée d'un extrait officiel du registre de bord ou rôle d'équipage et seront tenus, pendant tout le temps de leur séjour dans le port, à la disposition des consuls."

To any one familiar with the French language, it is abundantly clear that the word *leur* cannot possibly refer to *registre de bord* or *rôle d'équipage*, but must refer only to *individus*.

Except by reading into this convention words which do not exist there, or by reading *out* of it the clear, unambiguous expression, made in both languages, it is plain that the meaning is that persons composing the crew should, when it becomes necessary to confine them, be detained during the stay of such persons in the port.

If the interpretation of article VIII made by the judge below were correct, it would be almost impossible for the consular authority to maintain order on board the many hundreds of French vessels which enter the port of San Francisco every year, not to speak of the many thousands which enter the various other ports throughout the United States.

Let us suppose that a member of the crew of a French vessel, which is on the point of leaving the port of San Francisco, becomes guilty of an act of insubordination or mutiny, or any other act affecting the internal order or discipline of the ship. The master applies to the French consul, who causes the mutinous sailor to be arrested in accordance with the terms of article VIII. Under the construction made by De Haven, J., if the ship thereupon continues its voyage, the prisoner must be *immediately* released from custody. Under such circumstances, insubordination, mutiny, etc., would be of daily occurrence on the part of sailors who, tired of their ship and of their contract, want an excuse for being set free in San Francisco.

One of the reasons for which article VIII was drawn is that a sailor who has been guilty of insubordination, mutiny, etc., instead of being held a prisoner on his ship for a period of possibly many months, while the vessel continues its voyage, should be sent back by the consul to France or to the United States, as the case may be, at the earliest possible moment, by the first ship sailing homeward from the port of arrest, in order to be duly tried under the laws of his own country.

Let us suppose that a sailor on a French ship lying in the harbor of San Francisco should be put in irons and imprisoned in the hold by the master on account of an act of insubordination or mutiny, or any other act not affecting the tranquillity of the port. Could it be maintained that the master would not have the right to keep such sailor thus imprisoned until the return of the ship to France? Such

return, in case the ship is continuing on a long cruise, might not be for many months; whereas, if such sailor were arrested in accordance with the terms of article VIII, the consul could have him returned to France by the first ship sailing homeward, and there tried for his acts long before his own vessel could have reached home.

From the earliest historical period, the contract of a sailor has been treated as an exceptional one, involving, to a certain extent, the surrender of his personal liberty during the life of the contract (Robertson *vs.* Baldwin, 165 U. S., 275, 281–283). It has also come to be generally understood among civilized nations that all matters of discipline and things done on board which affect only the vessel or those belonging to it, not involving the peace and dignity of the country or the tranquillity of the port, should be left by the local government to be dealt with by the authorities of the nation to which the vessel belongs, as the laws of that nation or the interests of its commerce should require (Wildenhus's case,* 120 U. S., 1, 12, 15). It is upon such bases as these that consular jurisdiction is reciprocally granted in the treaties between the United States and various foreign nations, including the jurisdiction granted by article VIII of the consular convention between the United States and France.

The terms of article VIII were framed not only for the benefit of international commerce, but also for the benefit of the sailor himself, who, instead of being kept in irons in the ship's hold and possibly maltreated, is arrested on the consular requisition, and afterwards either returned to his ship (if expedient) or returned as soon as possible by another ship to his own country, there to be tried; or, under the laws of the United States, he is set at liberty, not again to be arrested for the same cause, after a detention of two months (R. S. U. S., 4081).

* Article VIII of the French convention in question is quoted in full on page 15 of the Wildenhus case.

It was suggested by counsel for the appellee in the court below (though the point was not argued or passed upon by said court) that the consular requisition for the arrest of a sailor should be made, *not* to the police authorities, but to the United States courts. It is wholly immaterial to the appellant and to the government he represents whether the persons whose detention is requested by French consuls be arrested by the local police or through the Federal authorities. In the present case the French consul in San Francisco addressed his request for the arrest of the mutinous sailor to the police authorities, thus acting in a manner which has been constant, uniform, and unquestioned in the United States for over a half a century, and in the same manner that United States consuls in France act today and have acted for fifty years, when they request the imprisonment of American sailors in the ports of France. (See Appendix.)

It is in every way as satisfactory for French consuls in the United States to make applications for arrest, under this convention, to the United States courts as to the police authorities. If the custom of applying to the police authorities—a custom which has been in practice both in the United States and France for fifty years—is erroneous, the appellant is the first to desire to be informed thereof, in order that he may adopt a correct form of procedure. What he does emphatically insist upon, however, is that the construction or interpretation of the wording of the convention given by De Haven, J., to the effect that an insubordinate sailor arrested by consular request can be detained only during *the ship's stay in the port*, is erroneous, being directly in opposition to the clear, unequivocal, positive words of the convention. So plain is this wording that there is little wonder that for so many years, both in the United States and France, no controversy had arisen in regard thereto. Prisoners arrested under this article in either country have always been detained, whether their ships had left the port of arrest or not, until such prisoners could be returned to

their ships, or returned to their countries by other ships, or put at liberty. It is only lately that the meaning of "*their stay in the port*" has been questioned, and it is this point that the appellant and the government he represents are urgently desirous of having determined by the Supreme Court of the United States.

The outcome is of high importance not only to French consuls in the United States, but to United States consuls in France, for, naturally, if French sailors detained under consular requisition in the United States are to be set free the instant their ships leave port, the French authorities will, under like circumstances, turn loose American sailors who are detained by consular requisition in the ports of France.

Such a result would be to put a premium on insubordination, mutiny, and desertion on the part of sailors of both countries.

The wording of article VIII is so definite and precise that the construction put upon it by the judge below may justly be regarded as indicating a purpose to change the highest law of the land by judicial action. The appellant maintains that the language of the article is so plain and unambiguous that there is no room for interpretation or construction.

> "If the language of the instrument is plain and unambiguous in itself, there is no room for interpretation or construction."
>
> "Interpretation and Construction," 17 A. & E. Cyclo. of Law, p. 4 (cases).

> "If the words of a treaty express the meaning clearly, there should be no other means of interpretation employed."
>
> "Treaties," 28 A. & E. Cyclo. of Law, p. 489.

> "Vattel says that it is not allowable to interpret what has no need of interpretation. If the meaning be evident and the conclusion be not absurd, you have no right to look beyond or beneath it, to alter or add to it by conjecture. Wolff observes that to do so is to remove all certainty from human transactions."
>
> 2 Phillimore, International Law, sec. 70.

"It is not allowable to interpret what has no need of interpretation, for when a treaty is conceived in clear and precise terms, and the sense is manifest, and leads to no absurdity, there can be no reason for refusing the sense which is naturally presented and manifested."

1 Halleck, International Law, p. 297 (ch. VIII, sec. 39).

"La première maxime générale sur l'interprétation est qu'il n'est pas permis d'interpréter ce qui n'a pas besoin d'interprétation. Quand un acte est conçu en termes clairs et précis, quand le sens en est manifeste et ne conduit à rien d'absurde, on n'a aucune raison de se refuser au sens que cet acte présente naturellement. Aller chercher ailleurs des conjectures pour le restreindre ou pour l'étendre, c'est vouloir l'éluder. Admettez une fois cette dangereuse méthode, il n'est aucun acte qu'elle ne rende inutile. Que la lumière brille dans toutes les dispositions de votre acte, qu'il soit conçu dans les termes les plus précis et les plus clairs, tout cela vous sera inutile, s'il est permis de chercher des raisons étrangères pour soutenir qu'on ne peut le prendre dans le sens qu'il présente naturellement."

2 Vattel "LeDroit des Gens," sec. 263.

"Les traités, étant essentiellement des contrats de bonne foi (actus bonæ fidei), doivent avant tout s'interpréter dans le sens de l'équité et du droit strict. Lorsqu'il n'y a aucune ambiguité dans les mots, que la signification est évidente et ne conduit pas à des résultats contraires à la saine raison, on n'a pas le droit d'en fausser le sens et la portée pratique par des arguties et des conjectures plus ou moins plausibles."

Calvo "Le Droit International," sec. 1650.

"In construing the language of treaties, the courts will adopt the same general rules which are applicable in the construction of statutes, contracts and written instruments generally."

"Treaties," 28 A. & E. Cyclo. of Law, p. 488.

"When the language used in a statute is plain and unambiguous, a refusal to recognize its natural obvious meaning may be justly regarded as indicating a purpose to change the law by judicial action."

Bate Refrigerating Co. *vs.* Sulzberger, 157 U. S., 1.

"Where the meaning is plain, the letter controls."

"Statutes," 26 A. & E. Cyclo. of Law, p. 598.

"This particular convention being operative upon both powers and intended for their mutual protection, should be interpreted in a spirit of *uberrima fides*, and in a manner to carry out its manifest purpose. * * * It is said by Chancellor Kent in his Commentaries (vol. 1, p. 174): 'Treaties of every kind are to receive a fair and liberal interpretation according to the intention of the contracting parties, and are to be kept with the most scrupulous good faith. Their meaning is to be ascertained by the same rules of construction and course of reasoning which we apply to the interpretation of private contracts.'"

Tucker *vs.* Alexandroff (the "Variag" case), 183 U. S., 424, 437.

It is a canon of interpretation that a treaty should be carried out in a spirit of *uberrima fides* and construed so as to give effect to the object designed (*In re* Ross, 140 U. S., 453, 475). The court should find an interpretation, if it can be done, which will involve no violation of the pledged faith of the Government of the United States to the government of another country, and should give that interpretation without hesitation (Ropes *vs.* Clinch, 8 Blatch., 304, 308).

The appellant, relying upon the integrity of this convention, respectfully asks that the action and order of the district court for the northern district of California in granting the writ of *habeas corpus* be reversed.

Respectfully submitted.

WALTER V. R. BERRY.
BENJAMIN S. MINOR.

# APPENDIX.

CONSULAR REGULATIONS OF THE UNITED STATES (1896), P. 723.

APPENDIX No. VI.

FORM No. 31.

*Request to Local Authorities to Imprison Seamen or Mariners.*

(Paragraphs 299, 320, and 353.)

CNSULATE OF THE UNITED STATES OF AMERICA AT ——,

——, 189–.

SIR: —— ——, —— ——, and —— ——, part of the crew of the —— of ——, whereof —— —— is master, recently arrived in this port from ——, having conducted themselves in an improper and insubordinate manner on board, and positively refused to do duty, I have the honor respectfully to request that you will please cause the said named persons to be arrested, brought on shore, and imprisoned until I can find it expedient to give them their liberty.

I have the honor to be, sir, your obedient servant,

—— ——,

*U. S. Consul.*

To —— ——,

*Captain* [*or other authorities of the port*].

Walter V. R. Berry. Benjamin S. Minor.
Hugh B. Rowland.

Berry & Minor, attorneys-at-law, Colorado building, 14th and G streets N. W., Washington, D. C.

Telephone: Main 2151.
Cable address: Bermin, Washington.

OCTOBER 15TH, 1904.

W. J. CARR, Esq.,
*Chief of the Consular Bureau,*
*Department of State, Washington, D. C.*

DEAR SIR: Referring to the Consular Regulations of 1896, Appendix No. VI, form No. 31, which contain instructions regarding the imprisonment of American seamen in France at the request of American consular officers, will you kindly let me know what is meant by the term "local authorities" therein contained.

Thanking you in advance for this information,
Very truly yours, WALTER V. R. BERRY.

Consular
K.

DEPARTMENT OF STATE,
WASHINGTON, *October* 18, 1904.

WALTER V. R. BERRY, Esquire,
*Colorado Building, Washington, D. C.*

DEAR SIR: In reply to your letter of the 15th instant I have to say that the term "local authorities" used in form No. 31, page 723 of the Consular Regulations of 1896, is regarded as meaning "police authorities" or "gendarmerie," when used in connection with the arrest or imprisonment of American seamen in France.

Very truly yours, W. J. CARR,
*Chief Consular Bureau.*

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 104.

HENRY DALLEMAGNE, CONSUL GENERAL OF THE REPUBLIC OF FRANCE, APPELLANT,

vs.

JEAN FRANCOIS MOISAN.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

REPLY BRIEF FOR APPELLANT.

WALTER V. R. BERRY,
BENJAMIN S. MINOR,

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C. 1905

# SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

## No. 104.

HENRY DALLEMAGNE, CONSUL GENERAL OF THE REPUBLIC OF FRANCE, APPELLANT,

*vs.*

JEAN FRANCOIS MOISAN.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

## REPLY BRIEF FOR APPELLANT.

There is practically no dispute concerning the facts of this case, the counsel for the appellee agreeing (Brief, p. 1) that "the statement of facts of appellant's opening brief is correct."

He asserts, however, that the record does not show Moisan to be an alien.

On page 2 of his brief he says: "The prisoner is not alleged not to have been a citizen of the United States."

On page 6 he adds: "The record does not show Moisan to have been an alien, and as far as the record shows he may

very well have been an American sailor employed at some American port, perhaps at San Francisco, for the return voyage to France."

And on page 15 he repeats: "The record shows that the proceeding failed to comply with the above statutes in the following respects: 1. It does not appear that Moisan is not a citizen of the United States."

This position is clearly the result of an oversight on the part of appellee's counsel. In his complaint for a writ of *habeas corpus*, duly signed and sworn to, the appellee declares:

"That he is Jean Francois Moisan, *a citizen of France*, more than 21 years of age" etc., etc. (Record, p. 1).

Turning to the law, we find that the appellee does not deny the power of the Federal Government to remove aliens at will, or to treat an alien as Moisan has been treated in this case. He neither denies the powers of its treaties to impose such restrictions and conditions upon aliens as it may deem wise, nor does he contend that the XIV amendment in any way invalidates article VIII of the treaty as applying to an alien sailor. He admits that within its sphere a treaty is paramount to the constitution and laws of a State (Brief, p. 6).

His contention is, however, that article VIII of this treaty cannot impose upon the authorities of the State of California the duty of arresting alien sailors or of assisting in their removal from that State, and he prays that this court may give its decision on these two constitutional questions raised by his brief.

The appellant, on behalf of the government he represents, does not feel that it is fitting or incumbent upon him to enter into an argument concerning the constitutionality of a treaty solemnly entered into with the United States. This treaty, drawn up on the part of the United States by the Hon. Edward Everett, was ratified by the Senate and proclaimed by President Franklin Pierce, through his Sec-

retary of State, the Hon. W. L. Marcy, over half a century ago. The provisions of article VIII, the constitutionality of which is now for the first time assailed, have been in constant operation for the arrest and the detention of sailors, both in France as well as in the United States, during all these years.

If article VIII is unconstitutional upon the grounds alleged by the appellee, a score of other treaties* (in force today between the United States and various foreign countries) containing articles practically similar to article VIII, must likewise be deemed unconstitutional.

If the appellee's contention be correct, provisions like those enacted in section 5280 of the Revised Statutes of the United States are necessarily unconstitutional also.

The case of Robertson *vs.* Baldwin, 165 U. S., 275, 277–280, which turns upon the powers (under a Federal statute) of justices of the peace to issue warrants to apprehend deserting seamen, and the cases of Wildenhus, 120 U. S., 1, 12–15, and Tucker *vs.* Alexandroff, 183 U. S., 424, 429, which discuss articles in various treaties similar to article VIII of the French treaty under consideration, have already been cited in appellant's opening brief.

In regard to the point made by the appellee, that by virtue of sections 4079, 4080, and 4081 of the Revised Statutes of the United States, the provisions of article VIII of this treaty can be carried into effect by consular application to *Federal authorities only*, the appellant has fully set out his position on page 11 of his opening brief. He repeats that it is wholly immaterial to him or to the government he represents whether the persons whose detention is requested by French consuls in the United States be arrested by the local police or through the Federal authorities. The appellant has, in this case, simply followed the custom which has been in operation both in the United States and in France for 50 years.

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*See Appendix.

The appellant desires once more to call the attention of this court to the fact that not one of the points relied upon by the appellee in his brief was touched upon or considered in the court below. That court ordered the discharge of the appellee on *one ground only*, namely, "that the bark *Jacques*, of the crew of which said Jean Francois Moisan was a member, has departed the port of San Francisco and is no longer in said port" (Record, p. 7).

It is the earnest desire and request of the appellant, on behalf of the government he represents, that the wording of this clause of article VIII of the treaty, to wit, "during the whole time of their stay in the port," be construed and interpreted by this court, in order that in the future all doubts upon this point, of such high importance not only to French consuls in the United States, but to American consuls in France, may be set at rest.

Respectfully submitted,

WALTER V. R. BERRY.
BENJAMIN S. MINOR.

# APPENDIX.

"COMPILATION OF TREATIES IN FORCE" (1899).

(Prepared under Act of July 7, 1898.)

| | | | |
|---|---|---|---|
| Austria, | May | 8, 1848, | Article 4 (p. 14). |
| Austria, | July | 11, 1870, | Article 11 (p. 21). |
| Belgium, | March | 9, 1880, | Article 11 (p. 54). |
| Belgium, | March | 9, 1880, | Article 12 (p. 54). |
| Brazil, | Dec. | 12, 1828, | Article 31 (p. 85). |
| Colombia, | Dec. | 12, 1848, | Article 33 (p. 134). |
| Colombia, | May | 4, 1850, | Article 3 (p. 139). |
| Denmark, | July | 11, 1861, | Article 2 (p. 160). |
| France, | June | 24, 1822, | Article 6 (p. 180). |
| France, | Feb. | 23, 1853, | Article 8 (p. 187). |
| France, | Feb. | 23, 1853, | Article 9 (p. 187). |
| Germany, | Dec. | 11, 1871, | Article 13 (p. 196). |
| Germany, | Dec. | 11, 1871, | Article 14 (p. 196). |
| Greece, | Dec. | 27, 1837, | Article 13 (p. 272). |
| Haiti, | Nov. | 3, 1864, | Article 36 (p. 285). |
| Italy, | May | 8, 1878, | Article 13 (p. 320). |
| Italy, | Feb. | 24, 1881, | Article 1 (p. 323). |
| Japan, | July | 29, 1858, | Article 9 (p. 331). |
| Netherlands, | May | 23, 1878, | Article 11 (p. 447). |
| Netherlands, | May | 23, 1878, | Article 12 (p. 448). |
| Peru, | Aug. | 31, 1887, | Article 32 (p. 506). |
| Prussia, | May | 1, 1828, | Article 11 (p. 518). |
| Roumania, | June | 17, 1881, | Article 11 (p. 526). |
| Roumania, | June | 17, 1881, | Article 12 (p. 526). |
| Russia, | Dec. | 18, 1832, | Article 9 (p. 533). |
| Sweden, | July | 4, 1827, | Article 14 (p. 615). |

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JAMES H. McKENNEY,

No. 104

# In the Supreme Court

OF THE

## United States.

OCTOBER TERM, 1904.

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HENRY DALLEMAGNE, Consul General of the Republic of France,

*Appellant,*

v.

JEAN FRANCOIS MOISAN,

*Appellee.*

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APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

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## BRIEF FOR APPELLEE.

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HENRY DALLEMAGNE, Consul General of the Republic of France,

*Appellant*,

v.

JEAN FRANCOIS MOISAN,

*Appellee.*

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

## BRIEF FOR APPELLEE.

For the purposes of this argument we agree that the statement of facts of appellant's opening brief is correct. That is to say, that the prisoner, Jean Francois Moisan, a sailor on the French bark Jacques, was arrested by the Chief of Police of the City and County of San Francisco, State of California, on a written request from the Consul General of the French Republic, the appellant, stating that Moisan "had conducted himself in an improper and insubordinate manner on board"; that the arrest took place on board the Jacques, and pursuant to the request Moisan was taken on shore to the city and county prison. That the "Jacques", some time after the arrest, left port and that Moisan was being held a prisoner by the said state officer until the Consul General of France could "find an opportunity of sending him away".

As a preliminary comment on the above facts we would call the Court's attention to the following:

(1) That the prisoner is not charged, nor held pending the preferment of charges, with any offense against the laws of the State of California;

(2) That the arresting official is not a federal officer, that it does not appear that he is a citizen of the United States, but that he makes the arrest *qua* an officer of a city and county of the State of California;

(3) That the prisoner is not charged with deserting the ship, thus bringing him within the apparent exception of Robinson v. Baldwin, 165 U. S. 275, holding that the sailor is attached to his ship in a quasi chattel relationship, enforcible by a quasi civil contractual proceeding;

(4) That the prisoner is not alleged not to have been a citizen of the United States.

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The act of the city and county chief of police is justified under Article VIII of the consular treaty between the United States and France, ratified by the United States Aug. 11, 1853 (10 U. S. Statutes at large, p. 997). That article provides that "the local authorities * * * shall "lend forcible aid to the consuls, when they may ask it, "to arrest and imprison all persons composing the crew, "whom they may deem it necessary to confine". The important words, so far as this brief is concerned, are "*the local authorities*". These may be construed in either of two ways (1) local authorities, *federal and state;* (2) local *federal* authorities. We will show that the im-

prisonment of Moisan is not justified under either construction of this article of the treaty.

Under the first construction, which would include state authorities, we will show that:

I. A federal treaty cannot impose on a state officer, *qua* state officer, a function which violates the constitution of the state which he represents in his official character;

II. A federal treaty cannot compel a state to enforce the penal laws of a foreign country by extradition or otherwise.

Under the second construction, which confines the term "local authorities" to local federal officials we will show that:

III. Congress has construed the treaty to apply only to federal authorities and has enacted legislation to provide for such cases; and a consul general must comply with the provisions of sections 4079 and 4080, Revised Statutes, before he can cause the arrest of a sailor under the treaty.

## I.

**A FEDERAL TREATY CANNOT IMPOSE ON A STATE OFFICER QUA STATE OFFICER, A FUNCTION VIOLATING THE CONSTITUTION OF THE STATE WHICH HE REPRESENTS IN HIS OFFICIAL CHARACTER.**

As before suggested, the imprisonment by the chief of police was not to compel Moisan to perform any contractual obligation to his ship. As a matter of fact the chief made it impossible to perform any contract he may have had with her. Indeed, the "Jacques" left port while he was confined in the city prison. The only reasonable construction of the chief's return to the writ is that Moisan was being held either to be returned to France to be tried upon some criminal charge, or as a punishment for the alleged insubordination. This is certainly the construction of the return most favorable to the appellant. If the chief of police cannot justify the arrest on the ground that the prisoner was held to be charged with or as a punishment for some French *criminal* offense *a fortiori* will he fail to justify on the ground that he is attempting to lend the state government to procure the satisfaction of some *contractual* obligation, to be litigated in France, by a seizure of the body of one of the contracting parties either in the nature of attachment or a *capias.*

The constitution of California has the usual provision providing that no "*person*" shall be deprived of his liberty without due process of law.

Constitution of Cal., Article I, Sec. 13.

Due process of law, where one is to be deprived of his liberty on a criminal charge, requires prosecution either by indictment or information and allowance of trial by jury.

Constitution of Cal., Article I, Secs. 7 and 8.

The constitution also abolishes civil arrests except for fraud or willful injury to person or property (Art. I, Sec. 15). The record here shows neither exception.

Neither information nor indictment had been filed against Moisan nor was he held pending the preferment of any charges leading to an information or indictment, or any prosecution under California law. It is patent, then, that the chief of police was holding Moisan in violation of the state constitution.

That Moisan is a "person" within the meaning of the above provisions of the state constitution seems to need no argument. However, the question is set at rest by Section 1977 of the Revised Statutes, enacted subsequently to the treaty in question, which provides as follows:

> "All persons within the jurisdiction of the United States shall have the same right in every state and territory * * * to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses and exactions of every kind and *to no other.*"

The above section was held to apply to a Chinese alien temporarily in the United States under the treaty of Nov. 17, 1880 (22 Stats. 827).

Yick Wo v. Hopkins, 118 U. S. 356.

The record thus fairly presents the question, "May a "treaty under the federal constitution impose on a state "officer *qua* state officer, a function which compels him "to violate the constitution of the state he represents in "his official capacity?"

It may be well at this time to limit the discussion by pointing out that we do not deny the full power of the *federal* government to remove aliens at will. Nor do we deny the power of its treaties to impose such restrictions and conditions upon aliens as it may deem wise. Nor do we contend that the fourteenth amendment in any way invalidates Article VIII of the treaty as applying to an alien sailor, though, as we have pointed out, the record does not show Moisan to have been an alien, and as far as the record shows he may very well have been an American sailor employed at some American port, perhaps at San Francisco, for the return voyage to France. Further, we admit that within its sphere a treaty is paramount to the constitution and laws of a state.

We do not deny that the federal government has the power to treat an alien as Moisan has been treated, but we do deny that it can, either by treaty or congressional legislation, authorize a state officer, acting in his official capacity, to assist it in such a proceeding. We contend that while a treaty may control the action of a federal officer, or of a citizen of the United States, it has no power to modify the framework of any state government by compelling state officers to do a thing forbidden by their constitution.

The principle we invoke for the freedom of state officials

from federal interference with the performance of their functions has many times been upheld by this Court, in cases involving attempts to raise federal revenue by taxing the salaries of state officers. It has been often said that "the power to tax is the power to destroy". If the congressional power to tax state salaries be upheld in any degree, the exercise of that power to the extent of taking fifty or seventy-five per cent of the official's income might be deemed a necessary measure for a great national emergency, and the state left practically without a government. Yet if the relatively indirect interference by taxation of state salaries is held beyond the nation's power, *a fortiori* is the sapping of energy and theft of time of a state official by directly imposing on him functions not authorized by the government he serves. And more vicious still the confusion introduced into the machinery of state government by giving functions to state officers of which the state constitution forbids the exercise.

In holding that Congress could not impose a tax on the salary of a judicial officer of the state, Mr. Justice Nelson said:

> "The constitution guarantees to the states a republican form of government and protects each against invasion or domestic violence. Such being the separate and independent condition of the states in our complex system * * * it would seem to follow as a reasonable if not a necessary consequence that the means and instrumentalities employed for carrying on the operation of their governments, for preserving their existence, and fulfilling the high and responsible duties assigned to them by the constitution should be left free and unimpaired, should not be liable to be crippled, much less defeated by the taxing

> power of another government, which power acknowledges no limits but the will of the legislative body imposing the tax."
>
> The Collector v. Day, 11 Wall. 113.

In an attempt by a state to tax the salary of a federal officer the converse was held to be true.

> Dobbins v. The Commissioners, 16 Peters 435.

Any "instrumentality employed for carrying on the " operation of their government" is beyond the reach of federal interference. Congress attempted to tax the municipal bonds of the city of Baltimore given to aid a railway which was to bring increased business to the city. This court held the tax invalid as interfering with the machinery of state government, saying:

> "A municipal corporation like the city of Baltimore is a representative not only of a state but is a portion of its governmental power. It is one of the creatures made for a specific purpose, to exercise within a limited sphere the powers of the state.
>
> United States v. Ry. Co., 17 Wallace 329.

The same holding was had where the congressional tax was laid upon the income from municipal bonds.

> Pollock v. Farmers Loan and Trust Co., 157 U. S. 583.

Even the extreme case of Veazie Bank v. Fenno, where the congressional power to regulate the currency was held paramount to the state control of its banks and where the tax on state banks destroyed their power to circulate

bank notes, places the limit of federal power far inside the boundaries we contend for it. The court there says:

> "It may be admitted that the reserved rights of the states, such as the right to pass laws, *to give effect to laws through executive action* to employ necessary agencies for legitimate purposes of state government, are not proper subjects for the taxing power of congress.
>
> Veazie Bank v. Fenno, 8 Wall. 547.

The same principle of the inviolability of the machinery of a state from federal interference has been laid down where national stamp duties were attempted to be imposed upon the process of state courts.

> Warren v. Paul, 22 Ind. 279;
> Jones v. Estate of Kesp, 19 Wis. 390;
> Fifield v. Close, 15 Mich. 505;
> Smith v. Short, 40 Ala. 385.

This court has twice construed attempts of congress to impose functions on state officers, once in the apprehension of fugitive slaves and the other the apprehension of fugitive sailors. In neither case was the point raised that if congress has the power to impose *any* function on a state official without the state's permission, it may impose enough to destroy his power to execute his state duties, and the court apparently did not consider the rule laid down in the cases holding that even the more remote interference of taxation of salaries was beyond the power of congress. In the latter case the "convenience" of the use of the state officer seemed to be a controlling consideration.

Both the cases, however, recognize the doctrine that the state official cannot be granted a function, the exercise of which is forbidden by the laws of his state.

In the first case, involving the question of apprehending fugitive slaves, the court, through Mr. Justice Story, says:

> "As to the authority so conferred on state magistrates, while a difference of opinion has existed, and may exist still on the point, in different states, none is entertained by this court, that state magistrates may, if they choose exercise that authority, *unless prohibited by state legislation.*"
>
> Prigg v. Commonwealth of Pennsylvania, 16 Peters 539 at 622.

In the second case, involving the same power with regard to fugitive sailors, the language of Judge Story above quoted is repeated with approval.

> Robertson v. Baldwin, 165 U. S. 275.

That a federal treaty is of no higher sanction than federal legislation is well established.

> Chae Chan Ping's case, 130 U. S. 600;
>
> Tong Yue Ting v. United States, 149 U. S. 698, and cases cited.

In conclusion we submit that whatever power a federal officer may properly receive to make such an "executive arrest" as Moisan was subjected to, no state officer can, under his state constitution, lend his assistance to such a proceeding.

It may be well to point out that the above question has a practical as well as an academic reason for its solution. There are no federal prisons in California and ultimately the custody of these sailors must come to state officials. We are not daunted by this horn of the dilemma, and say boldly that the treaty provision far better should be rendered of no present avail, and that the United States should provide its own prisons, than that Congress should be held to be authorized to lay violent hands on the machinery of state government, and to give warrant to state officials to violate one of its constitutional guarantees.

## II.

### A FEDERAL TREATY CANNOT COMPEL A STATE TO ENFORCE THE PENAL LAWS OF A FOREIGN COUNTRY BY ASSISTING IN EXTRADITION OR OTHERWISE.

In our first section we have pointed out that Moisan is being imprisoned in a proceeding criminal in its nature. Opposing counsel informs me that Moisan's insubordination violates a law of the French navy and that he is to be charged and tried on his return. It is perfectly plain from the record that the process attempted is in the nature of an extradition of an alleged offender against French law.

We submit that the state cannot lend its assistance to this. The general rule that a state cannot enforce the criminal laws of a foreign government finds no exception in the state or federal constitution. Chief Justice Marshall has tersely expressed the rule in The Antelope, 10 Wheaton 66, at 123, and it has been repeatedly recognized in the decisions.

Huntington v. Attrill, 146 U. S. 657.

Extradition, as a part of the criminal procedure of a foreign nation, is no exception to the general rule. This court has said:

> "Under the constitution, the executive of a state has no power to surrender a person charged with murder to the authorities of a foreign government for trial."

Holmes v. Jennison, 14 Peters 540;

Ex parte Holmes, 12 Vt. 631.

State laws providing for the surrender of fugitives from foreign governments are held unconstitutional.

People v. Curtis, 50 N. Y. 321.

For this second reason we submit the decision of the district court should be sustained and the prisoner freed.

## III.

**CONGRESS HAS CONSTRUED THE TREATY TO APPLY TO FEDERAL AUTHORITIES ONLY AND HAS ENACTED LEGISLATION TO CARRY THE TREATY INTO EFFECT WITH WHICH THE APPELLANT HAS NOT COMPLIED.**

In our previous sections we have shown that the term local "authorities" cannot be construed to apply to local *state* authorities, and that the decision of that question must necessarily be rendered as the treaty can be made effective only in the event that the wardens of state prisons can hold aliens in such executive arrests.

We will now show that in this particular case congress has so legislated that the state official, if he is ever to receive the custody of the prisoner, can do so only after a hearing before a federal judge or commissioner.

Under the congressional procedure the consul must make application to "any court of record of the United " States, or to any judge thereof", or "any commissioner " of a circuit court, setting forth that such a difficulty, " controversy, or disorder has arisen, briefly stating the " nature thereof" and that the sailor "has withdrawn, or " is believed to be about to withdraw", or "has refused, " or is about to refuse to obey the lawful jurisdiction of " such consular or commercial authority" and "stating " that such a person is not a citizen of the United States". Further, it provides for the issuance of "a warrant of

" arrest issued to the marshal or a *citizen of the United* " *States, specifically deputed for that purpose*".

U. S. Statutes at large, Secs. 4079, 4080.

As an opinion of the legislature on the constitutionality of a treaty giving to state officers the function appellant claims for the chief of police this statute is significant. The convenience of using the state judicial officers at those smaller ports where no federal officers reside must have been patent to congress, yet it has with great particularity confined the enforcement of the treaty provisions to federal officers or citizens of the United States.

The act, however, is more than an academic construction of the treaty. As a subsequent enactment it limits the term local authorities to the enumerated persons, and creates proceedings prerequisite to the arrest.

The record shows that the proceeding failed to comply with the above statutes in the following respects: 1. It does not appear that Moisan is not a citizen of the United States. 2. It does not appear tnat any application was made to a United States court. judge or commissioner or to any court, state or federal. 3. It does not appear that Moisan refused to submit himself to the consular authority, or that he was about to do so, or that the consul believed he was about to do so. 4. It does not appear that any warrant was issued to any one for Moisan's arrest. 5. It does not appear that the arresting officer was a citizen of the United States.

In concluding, we respectfully pray that the court give its decision on the first two constitutional questions raised by our brief, as questions that must be determined by this court before the treaty provision can be said to be finally construed. As no discussion of these points was had in the opening brief of appellant we further pray that we may be allowed to file a reply to any brief filed which controverts the position here taken.

Respectfully submitted,

William Brauer

*Attorney for Appellee.*

# Supreme Court of the United States.

No. 104.—October Term, 1904.

Henry Dallemagne, Consul General of the Republic of France, Appellant,
*vs.*
Jean Francois Moisan.

Appeal from the District Court of the United States for the Northern District of California.

[March 13, 1905.]

This is an appeal on the part of the consul general of the Republic of France from the judgment of the District Court of the United States for the Northern District of California, discharging the defendant Moisan from imprisonment.

The proceeding arises on *habeas corpus*, to inquire into the validity of the detention of defendant in the city prison of San Francisco, in the State of California. His application for the writ was addressed to the District Court of theUnited States for the Northern District of California, and it showed that he was a citizen of France and was imprisoned by virtue of a requisition in writing, signed by the French consul general residing in San Francisco, and addressed to the chief of police of San Francisco, California, requiring his arrest as one of the crew of the French ship Jacques, then in that port, on account of his insubordinate conduct as one of such crew. (The requisition contained all the averments of facts which would warrant the arrest of the petitioner under the provisions of the treaty of 1853 between the United States and France.) The petitioner also averred that at the time of the making of his application for the writ the ship was not in the port of San Francisco, but had departed therefrom some time before. The petitioner was arrested by the chief of police, under such requisition, on the first day of May, 1903, and since that time had been confined in the city prison of San Francisco. He asserted that his imprisonment was illegal, because the facts set forth did not confer jurisdiction upon the consul or the chief of police, or either of them, to restrain complainant from his liberty, or to imprison him.

The petition was dated the 26th day of May, 1903, and the writ was issued, returnable before the District Court on the 28th day of May, 1903. The chief of police produced the body of the defendant, pursuant to the command of the writ, and justified the imprisonment, under the requisition referred to.

The District Court, after hearing counsel, made an order discharging the defendant from arrest, on the ground that it appeared to the court that

the bark Jacques, of the crew of which the defendant was a member, had departed from the port of San Francisco, and was no longer in that port. It was further ordered that the execution of the order should be stayed for the term of one day. Immediately thereon the consul general filed with the District Court his petition for appeal to the Supreme Court of the United States from the judgment discharging the defendant from imprisonment, which appeal was duly allowed, and thereupon the petitioner was admitted to bail by the District Court.

Mr. Justice PECKHAM, after making the foregoing statement of the facts, delivered the opinion of the Court.

This case involves the construction of certain language in the eighth article of the consular convention between the United States and France, concluded on the 23d day of February, 1853, and proclaimed by the President of the United States on the 12th day of August, 1853, the whole convention being still in full force and effect. (10 Stat. 992, 996.) The article is reproduced in the margin.*

The first objection made by the defendant is to the validity of the requisition of the consul general, because it was directed to the chief of police of San Francisco, he being an officer of the State as distinguished from a Federal officer, the defendant contending that a Federal treaty cannot impose on a State officer, as such, a function violating the constitution of the State which he represents in his official character. It has long been held that power may be conferred upon a State officer, as such, to execute a duty imposed under an act of Congress, and the officer may execute the same, unless its execution is prohibited by the constitution or legislation of the State. (*Prigg* v. *Pennsylvania*, 16 Pet. 539, 622; *Robertson* v. *Baldwin*, 165 U. S. 275.) As to the objection that there was any statute or any constitutional provision of the State, prohibiting the execution

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* ARTICLE VIII. The respective consuls general, consuls, vice consuls, or consular agents, shall have exclusive charge of the internal order of the merchant vessels of their nation, and shall alone take cognizance of differences which may arise, either at sea or in port, between the captain, officers, and crew, without exception, particularly in reference to the adjustment of wages and the execution of contracts. The local authorities shall not, on any pretext, interfere in these differences, but shall lend forcible aid to the consuls, when they may ask it, to arrest and imprison all persons composing the crew whom they may deem it necessary to confine. Those persons shall be arrested at the sole request of the consuls, addressed in writing to the local authority, and supported by an official extract from the register of the ship or the list of the crew, and shall be held, during the whole time of their stay in the port, at the disposal of the consuls. Their release shall be granted at the mere request of the consuls, made in writing. The expenses of the arrest and detention of those persons shall be paid by the consuls,

of the power conferred by the treaty upon the State officer, we think it unfounded. We find nothing in the constitution or in the statutes of California which forbids or would prevent the execution of the power by a State officer, in case he were willing to execute it. The provisions in the *constitution of the State, cited by counsel for defendant*, relate in substance only to the general proposition that no person should be deprived of his liberty without due process of law. The execution of a treaty between the United States and a foreign government, such as the one in question, would not violate any provision of the California constitution; the imprisonment is not pursuant to a conviction of crime but is simply a temporary detention of a sailor, whose contract of service is an exceptional one, (*Robertson* v. *Baldwin supra*,) for the purpose of securing his person during the time and under the circumstances provided for in the treaty, as concerning the internal order and discipline of the vessel. The murder on a foreign vessel, while in one of the ports of this country, of one of the crew of such vessel by another member of that crew has been held not to come within the terms of a somewhat similar treaty with Belgium, because the crime charged concerned more than the internal order or discipline of the foreign vessel. (*Wildenhus's case*, 120 U. S. 1.)

The chief of police voluntarily performed the request of the consul as contained in the written requisition, and the arrest was, therefore, not illegal so far as this ground is concerned.

There is another difficulty, however, and that is founded upon the provisions of the statutes of the United States. By the act of Congress, approved June 11, 1864, (13 Stat. 121,) entitled "An act to provide for the execution of treaties between the United States and foreign nations, respecting consular jurisdiction over the crews of vessels of such foreign nations in the waters and ports of the United States," full provision was made for the execution of such treaties. It was therein provided (section second) that application for the arrest might be made "to any court of record of the United States, or any judge thereof, or to any commissioner appointed under the laws of the United States." The act then provided for the issuing of a warrant for the arrest of the individual complained of, directed to the marshal of the United States, and requiring him to arrest the individual and bring him before the court or person issuing the warrant, for examination, and if, on such examination, it appeared that the matter complained of concerned only the internal order or discipline of the foreign ship, the court should then issue a warrant committing such person to prison, etc. It was further provided that no person should be detained more than two months after his arrest, but at the end of that time he should be allowed to depart and should not again be arrested for the same cause. The act was carried forward, in substance, into the Revised Statutes of the United States as sections 4079, 4080, 4081. (See also 2d Comp. Stat. page 2776.) This statute

having been passed by the United States for the purpose of executing the treaties it had entered into with foreign governments, must be regarded as the only means proper to be adopted for that purpose. Consequently, the requisition of the consul general should have been presented to the District Court or judge, &c., pursuant to the act of Congress, and the arrest should have been made by the marshal as therein provided for. Therefore the arrest of the seaman by the chief of police was unauthorized. When, however, the defendant was brought before the District Court of the United States upon the writ of *habeas corpus*, that court being mentioned in the statute as one of the authorities to issue warrants for the arrest of the individual complained of, and having power under the statute to examine into the question and to commit the person thus arrested to prison according to the provisions of the act, it would have been the duty of the court, under such circumstances, upon the production of the defendant under the writ, and upon the request of the consul, to have made an examination, and to have committed the defendant to prison if he were found to come under the terms of the treaty. It was, therefore, but a formal objection to the regularity of the arrest, which would have been obviated by the action of the court in examining into the case, and the defendant would not have been entitled to discharge merely because the person executing the warrant was not authorized so to do.

The important question remains as to the true construction of the eighth article of the treaty, with reference to the limitation of the imprisonment of the person coming within its terms. The District Court has held that the imprisonment must end with the departure of the vessel from the port at which the seaman was taken from the vessel. This we regard as an erroneous construction of the terms of the article.

The provisions of that article seem to us plain, and they refer to the imprisonment of the seaman and his detention during the time of his stay in port, and the language does not refer in that respect to the stay of the ship in port. The treaty provides that the local authorities shall lend forcible aid to the consuls when they may ask for the arrest and imprisonment of persons composing the crew, whom they may deem it necessary to confine. The language has no reference whatever to the ship, and they (the persons arrested) are held during their stay in the port "at the disposal of the consul." Surely the ship is not held at the disposal of the consul. It is the persons arrested who are held, and they are to be released at the mere request of the consul, made in writing, and the expenses of the arrest and detention of the persons arrested are to be paid by the consul. From the language of the treaty the departure of the ship from the port need have no effect whatever upon the imprisonment of the persons arrested. The statute (sec. 4801 of the Rev. Stat.) provides that the imprisonment shall in no case last longer than two months, and at the end of that time

the person arrested is to be set at liberty, and shall not again be arrested for the same cause. The statute makes no reference to the stay of the vessel in port, and the legislative construction of the treaty is that the imprisonment is not limited by the departure of the ship. Therefore the statute provides that such imprisonment shall not last, in any event, longer than two months. That term might end while the vessel was still in port. This construction not only carries out the plain language of the treaty, but, it seems to us, it is its reasonable interpretation. A vessel may arrive in port with a mutinous sailor, whose arrest is asked for under the treaty. When imprisoned pursuant to the terms of the treaty he ought not to be discharged without the request of the consul while within the limit of the term of imprisonment provided by the statute, simply because the vessel from which he was taken has left the port. If that were so the result would be either that the sailor would be discharged as soon as the ship left the port, or, in order to prevent such discharge, he would be taken on board the ship again, and probably be placed in irons. The ship might then continue a voyage which would not bring it back to France for months. During this time the sailor might be kept in irons and in close confinement on board ship, or else the discipline and safety of the ship might be placed in peril. By the other construction, although the ship had left the port without the mutinous sailor, he would not be entitled to his discharge from imprisonment within the two months provided for by the statute, and this would give an opportunity to the consul to send the sailor back to France at the earliest opportunity and at the expense of the French Government, by a vessel which was going directly to that country.

The District Court erred in discharging the defendant before the expiration of the two months provided for in the act of Congress, and against the protest of the French consul. Less than one of the two months of imprisonment permitted by the statute had expired when the defendant was discharged. The order discharging him must be reversed and the defendant remanded to imprisonment in a prison where prisoners under sentence of a court of the United States may be lawfully committed, (R. S., section 4081,) subject to the jurisdiction of the French consular authority of the port of San Francisco, but such imprisonment must not exceed, when taken with the former imprisonment of the defendant, the term of two months in the aggregate.

*Reversed, and remanded for further proceedings consistent with this opinion.*

Mr. Justice HARLAN dissented.